APPENDIX II.

(Vide answer to question No. 16, page 91 supra.)

Memorandum No. 78085-N/45-4, Development, dated 22nd April 1946.

[Rent—Madras House Rent Control Order—Increase in the assessment of owner-occupied houses by the local bodies—Prohibition—Further instructions—Issued.]

READ—the following papers :—

From the Inspector of Municipal Councils and Local Boards, dated 30th November 1945, No. 31852/45-A.

From the Commissioner, Corporation of Madras, dated 13th December 1945, R.D.C. No. 17769/45.

From the Inspector of Municipal Councils and Local Boards, dated 13th December 1945, Endorsement No. 36286/45.

From the Chairman, Municipal Council, Proddattur, dated 7th January 1946, No. 110/46.

From the Inspector of Municipal Councils and Local Boards, dated 7th February 1946, Endorsement No. 3272/46.

Memorandum—No. 78085-N/45-4, Development, dated 22nd April **1946.**

In G.O. Ms. No. 3878, Development, dated the 5th October 1945, instructions were issued to all local bodies that so long as the Madras House Rent Control Order is in force, the annual rental value of a house occupied by the owner should not be raised by any municipality or local board as the case may be, to an amount exceeding that which prevailed during the twelve months prior to the 1st April 1940, unless its rental value has been increased by improvements or additions to the building. In carrying out the above instructions, the Commissioner, Corporation of Madras, the Commissioners of Kurnool, Vellore, Nellore, Madurai, Bimilipatam and Tiruppattur municipalities, the Chairman, Municipal Council, Proddatur, and the Executive Officer, Panchayat Board, Kallakurichi, have raised the following points :—

(i) Rule 8 (1) of Schedule IV of the District Municipalities Act, 1920, lays down that the assessment books shall be completely revised by the Executive Authority once in every five years and allows discretion to revise the taxes on buildings whether let out for rent or occupied by the owners, if there are reasonable grounds for revision. The point whether the assessments on houses occupied by owners should or should not be revised in the quinquennial revision though their value has been considerably increased after 1940–41 may be clarified.

(ii) There are cases of under and inadequate assessments of owner-occupied houses and G.O. Ms. No. 3878, Development, dated 5th October 1945, should not operate as a bar against the raising of the annual rental value in these cases.

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(iii) Instructions should be issued as to whether houses occupied by the owners but portions of which are let out and houses which are re-occupied by owners after they had been let out temporarily on higher rent should be treated in the same manner as owner occupied houses for purposes of assessment to tax.

(iv) A landlord who owns several houses and has rented out all the houses on high rents except the house in which he resides should be asked to pay a high rate of assessment for the house in his occupation and similarly persons who are responsible for rise in rents on account of inflation should be charged a high rate of assessment.

(v) In G.O. Ms. No. 3878, Development, dated 5th October 1945, a reference has been made to the Rent Control Order, 1941. As a new Madras House Rent Control Order, 1945, has been issued in supersession of the Orders issued in 1941, it is not clear whether the instructions in G.O. Ms. No. 3878, Development, dated 5th October 1945, should be given effect to.

(vi) Under the Madras House Rent Control Order, in fixing the fair rent for houses, the Rent Controller has been permitted to allow an increase not exceeding 8-1/3rd per cent of the rental levels that prevailed during 1939–40. The Corporation and the local bodies also should be permitted to enhance the assessment in respect of owner-occupied houses by at least 8-1/3rd per cent over the rental value that prevailed during 1939–40 as the rise in value is general and not confined to rented houses alone.

(vii) The Rent Control Order applies only to a house which is let or is to be let for residential purposes and not to owner-occupied houses and consequently there is no need to secure a conformity between tax assessments and the spirit of the regulations in the Rent Control Order.

(viii) G.O. Ms. No. 3878, Development, dated 5th October 1945, restricts the exercise of the discretion vested by law in the assessing authorities.

(ix) As a result of the Government Order, the houses let out for rent can be assessed on the basis of the actual rentals while houses occupied by owners should not be raised over the figures of 1939–40 and this will bring about a great disparity in the assessment of houses of the same kind when occupied by owners and when let out for rent.

(x) The points whether, in view of the Government Order, the assessments made in 1940 in respect of owner-occupied houses should be revised or whether those made in 1945 only need revision and whether the owners of such houses should apply for a revision of the assessment or whether the municipality should do it and whether the owners are entitled to refunds in respect of tax already collected.

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2. The Government have examined the points raised by the Executive Authorities of local bodies and issue the following further instructions for their guidance :—

Point (i).—The assessment of houses occupied by owners are revised in conformity with the principles laid down in section 100 (2) of the City Municipal Act, 1919, and section 82 (2) of the District Municipalities Act, 1920, according to which the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month and from year to year subject to certain reductions. The procedure followed by the Corporation of Madras and other local bodies in arriving at the gross annual rental value in respect of owner-occupied houses is by taking into consideration the rent fetched by similar buildings in the neighbourhood occupied by tenants. It was considered that the procedure adopted by the local bodies, in fixing the gross annual rental value for these owner occupied houses taking into consideration only the high rent now paid by the tenants in the locality due to scarcity of accommodation was not reasonable and that a landlord occupying his own house should not thus be forced to pay, for no fault of his own, a higher assessment. As the Madras House Rent Control Order restricts the enhancement of rents by the landlords, it was also considered justifiable that the assessment on the houses occupied by the owners also should not be increased over that level and instructions were issued accordingly in G.O. Ms. No. 3878, Development, dated 5th October 1945. These instructions do not prohibit any statutory revision of assessments but only draw attention to the correct procedure to be followed in fixing the gross annual rental value in respect of the houses occupied by the owners.

Point (ii).—Attention is invited to Government Memorandum No. 67986—N/45-2, Development, dated 19th November 1945, in which it has already been explained that G.O. Ms. No. 3878, Development, dated the 5th October 1945, will not operate as a bar against raising the annual rental value of houses which are found to have been inadequately assessed even on the basis of the rentals which prevailed during 1939–40.

Point (*iii*).—The instructions in G.O. Ms. 3878, Development, dated 5th October 1945, will apply to a house temporarily let out and then re-occupied by the owner from the date of such re-occupation but not a house a portion of which only is occupied by the owner.

Point (iv).—In fixing the rental value of a property, it is the property and not the ability of the owner to pay the assessment that should be taken into consideration. Further, if the owner raises the rents of the houses let out by him the local bodies will automatically enhance the assessment in respect of these houses. The rental value of the houses in each of the cases referred to should be assessed independently.

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Point (v).—The instructions in G.O. Ms. No. 3878, Development, dated 5th October 1945, were not issued under any of the provisions of the Madras House Rent Control Order. The fact that the Madras House Rent Control Order, 1941, has been repealed and replaced by the House Rent Control Order, 1945, cannot affect the validity of the instructions in the Government Order.

Point (vi).—The Government have no objection to the enhancement of the assessment in respect of owner occupied houses by 8-1/3rd per cent over the rental value that prevailed during 1939–40.

Point (vii).—The Government consider that although the House Rent Control Order does not apply to houses which are occupied by the owners, the provisions of the Order should be taken into account in the determination of the annual rental value of such houses with reference to section 100 (2) of the City Municipal Act and section 82 (2) of the District Municipalities Act as they have a very important bearing upon the letting value of the house.

Point (viii).—G.O. Ms. No. 3878, Development, dated 5th October 1945, does not in any way restrict the exercise of the discretion vested by law in the assessing authorities. The Government Order only points out the bearing of the House Rent Control Order on the subject of the determination of the "annual value" of premises under the City Municipal and District Municipalities Acts. Generally, the annual value of a house occupied by its owner has to be determined with reference to the rents prevailing in the neighbourhood. But if those rents are exorbitant and cannot be justified with reference to the provisions of the House Rent Control Order, it will not be right to take them into account as the provisions of the House Rent Control Order, which is a statutory order, cannot be ignored. Section 100 (2) of the City Municipality Act and section 82 (2) of the District Municipalities Act refer to the annual rent at which the premises may reasonably be expected to be let from month to month or from year to year. An exorbitant rent not justified by the House Rent Control Order and which, on the application of a tenant, is bound to be reduced to the level of "fair rent" as prescribed by that order, cannot be regarded as a rent at which the owner occupied house can reasonably be expected to be let within the meaning of section 100 (2) of the City Municipality Act and section 82 (2) of the District Municipalities Act. An assessing authority who fixes the annual value of an owner-occupied house with reference to exorbitant rents prevailing in the neighbourhood, without bearing in mind the provisions of the House Rent Control Order, cannot be regarded as having exercised his discretion properly.

Point (ix).—The disparity in the assessment of houses of the same kind when occupied by owners and when let out for rent is bound to exist even as it now exists in the case of a house for

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which "fair rent" has been fixed and that of a similar house in the same locality, fetching an exorbitant rent for which "fair rent" has not been fixed and such disparity cannot be helped.

Point (x).—The Government consider that it is not necessary to undertake a general revision of the assessment of houses occupied by the owners. It will be sufficient if the rates are revised on application by owners and a reduction in assessment is sanctioned in regard to a subsequent half year. The question of granting refund in such cases will not therefore arise.

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